

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONYA HAMMITTE, DAVID STONE,
JOSEPH STEWART, and
AMERICAN INDIAN SERVICES, INC., on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Case No. 06-11655

MICHAEL O. LEAVITT, in his
official capacity as Secretary of the
Department of Health and Human Services,
UNITED STATES DEPARTMENT OF HEALTH
AND HUMAN SERVICES, CHARLES W. GRIM,
in his official capacity as directed of Indian Health
Service, and INDIAN HEALTH SERVICE,

HONORABLE AVERN COHN

Defendants.

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ORDER REQUIRING SUPPLEMENTAL PAPERS

This is a case arising out of the provision of medical services to American Indians in Metropolitan Detroit. Plaintiffs Tonya Hammitte, David Stone, Joseph Stewart, and American Indian Services Inc., on behalf of themselves and all others similarly situated¹ are suing defendants Michael O. Leavitt, in his official capacity as Secretary of the Department of Health and Human Services, the United States Department of Health and Human Services, Charles W. Grim, in his official capacity as director of Indian Health Service, and the Indian Health Service (IHS). Plaintiffs claim that defendants

¹Plaintiffs seek class action status. However, no class has been certified.

have (1) breached their statutory fiduciary obligation by failing to provide appropriate health care to American Indians in Metropolitan Detroit area and (2) have engaged in irrational, arbitrary, and inequitable distribution of health care resources to urban American Indians in violation of the Due Process Clause of the Fifth Amendment. Plaintiff seek declaratory and injunctive relief.

Before the Court is defendants' Motion to Dismiss under Fed. R. Civ. P 12(b)(1) and (6) on the grounds that the Court lacks subject matter jurisdiction and the complaint fails to state a claim upon which the relief can be granted. The Court held a hearing on October 24, 2005. At the hearing, the Court directed the parties to submit supplemental papers.² This Order clarifies the nature of the supplemental papers.

Plaintiffs shall submit the following:

- A draft form of judgment or decree that it will ask the Court to enter should plaintiffs prevail on their claims
- A notebook containing the statutory scheme relating to Congress' obligation to provide Indian health services with the relevant provisions highlighted and tabbed.

Defendants shall submit the following

- A notebook containing the appropriation act for the current year related to the approximately 2.5 billion in appropriations to the IHS and which are lump sum and which are itemized. See attached Exhibit A.

²Although the motion before the Court is a motion to dismiss, the Court can consider materials outside the pleadings without converting the motion to a motion for summary judgment. The requested materials are reiterated the contents of the complaint, referred to in the complaint, and/or central to the claims asserted. As such, they can be considered on a motion to dismiss. See Weiner v. Klais and Co., 108 F.3d 86, 89 (6th Cir. 1997). To the extent that the requested materials are public records, they may also be considered in ruling on a 12(b)(6) motion. See Jackson v. City of Columbus, 194 F.3d 737, 745 (6th Cir. 1999), overruled on other grounds by Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002).

The supplemental papers shall be lodged with the Court within twenty (20) days.

SO ORDERED.

s/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: October 25, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, October 25, 2006, by electronic and/or ordinary mail.

s/Julie Owens
Case Manager, (313) 234-5160